



# UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/753,867	01/02/2001	Edward C. Guerrero JR.	5500-64900	1985

7590

04/13/2004

Robert C. Kowert  
Conley, Rose & Tayon, P.C.  
P.O. Box 398  
Austin, TX 78767-0398

EXAMINER

DANG, KHANH NMN

ART UNIT

PAPER NUMBER

2111

8

DATE MAILED: 04/13/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

**Advisory Action**

Application No.

09/753,867

Applicant(s)

GUERRERO ET AL.

Examiner

Khanh Dang

Art Unit

2111

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 29 March 2004 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

**PERIOD FOR REPLY** [check either a) or b)]

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
- b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.
- ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☐ A Notice of Appeal was filed on \_\_\_\_\_. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. ☐ The proposed amendment(s) will not be entered because:
- (a) ☐ they raise new issues that would require further consideration and/or search (see NOTE below);
- (b) ☐ they raise the issue of new matter (see Note below);
- (c) ☐ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
- (d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: \_\_\_\_\_

3. ☐ Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.
4. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
5. ☒ The a) ☐ affidavit, b) ☐ exhibit, or c) ☒ request for reconsideration has been considered but does NOT place the application in condition for allowance because: See Continuation Sheet.
6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
7. ☐ For purposes of Appeal, the proposed amendment(s) a) ☐ will not be entered or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: \_\_\_\_\_

Claim(s) objected to: \_\_\_\_\_

Claim(s) rejected: 1-40.

Claim(s) withdrawn from consideration: \_\_\_\_\_

8. ☐ The drawing correction filed on \_\_\_\_\_ is a) ☐ approved or b) ☐ disapproved by the Examiner.

9. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). \_\_\_\_\_

10. ☐ Other: \_\_\_\_\_

Khanh Dang  
Primary Examiner

Continuation of 5. does NOT place the application in condition for allowance because:

As clearly stated in the Final Rejection, and further discussed in an Interview on 3/22/2004, the claimed invention is anticipated by Voegeli et al. With regard to the 35 USC 112, 2nd paragraph rejection, Applicant's attention is again directed to the Examiner's remarks in the Final Office Action. Note also that arbitration process intrinsically requires more than one involved party to a dispute. As a matter of fact, arbitration is a "process by which the parties to a dispute submit their differences to the judgment of an impartial person or group appointed by mutual consent or statutory provision" or a "hearing and determination of a cause between parties in controversy, by a person or persons chosen by the parties." See Dictionary.com. With regard to the 102 Rejection, Applicant's attention is again directed to the Final Office Action, and to the 3/22/2004 Interview Summary. Note additionally that Applicant's argument in the 3/29/2004 Response to Final Action is merely a reiteration of the same issue discussed in detail during the above mentioned Interview. With regard to the 103 Rejection, Applicant's attention is again directed to the Final Office Action. Note additionally that with regard to the term "arbiter" or arbitration, see discussion above and further, the 112, 2nd paragraph rejection. Note also that further response to Applicant's argument regarding the 103 Rejection may be appropriately provided in due course. Applicant's request for an interview is denied. 37 CFR 1.116 clearly states that "[t]he prosecution of an application before the examiner should ordinarily be concluded with the final action. However, one personal interview by applicant may be entertained after such final action if circumstances warrant. Thus, only one request by applicant for a personal interview after final should be granted." In the instant case, one interview focussing squarely on Applicant's pre-submitted agenda has already been granted.